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*Eulogio R. Lerum et al., Petitioners-appellants v. The People of the Philippines, Necessary Party, vs. Roman A. Cruz et al., Respondents-Appellees, G. R. No. 2783, November 29, 1950.*

**DECLARATORY RELIEF; IN A CRIMINAL CASE; PARTIES; INTEREST AND PERSONALITY OF PRIVATE PROSECUTOR.**

— In a petition for declaratory relief filed to test the sufficiency or probative value of certain testimony given in a criminal case, the interested party is the people of the Philippines. In such case, the city attorney should be the one to ask for the declaratory relief if it is desired to have said matter tested in court and if and when this step is feasible under the law. Inasmuch as all criminal actions can only be prosecuted under the direction and control of the fiscal and for that matter he is the only official who can represent the people of the Philippines, private prosecutors, who can only intervene subject to the control of the fiscal or city attorney, are not the proper parties to file the aforesaid petition for declaratory relief.

*Antonio Barredo, Eulogio R. Lerum and G. Viola Fernando for*

*appellants.*

*No appearance for appellees.*

DECISION

BAUTISTA ANGELO, J.:

This is an appeal from an order of the Court of First Instance of Rizal (Quezon City) dismissing the petition for declaratory relief filed by attorneys Eulogio R. Lerum and G. Viola Fernando as private prosecutors in behalf of the People of the Philippines for the purpose of testing the sufficiency and probative value of the testimony of former Judge Roman A. Cruz to prove a decree of divorce issued by him while a judge of First Instance of Manila sometime in 1944.

It appears that a case for bigamy was filed against Nello or to a statute or ordinance, to warrant declaratory relief. Any other matter not mentioned therein is deemed excluded. This is under the principle of *expressio unius est exclusio alterius*.

Now, does the subject matter under consideration come within the import of the ruse? The answer cannot but be in the negative, for it does not refer to any written instrument, statute or ordinance. It merely refers to the sufficiency or probative value of an oral evidence concerning a decree of divorce issued by a former judge, which the court trying the bigamy case has ample power and authority to pass upon. This is not the opportune moment to look into the correctness of the ruling of the court in said bigamy case allowing the presentation of oral evidence to prove a decree of divorce under the circumstances at present obtaining, for the bigamy case is still pending determination. This will be determined in due time when properly presented before this Court. For the purposes of this appeal, it suffices for this Court to declare that the subject matter of the petition does not warrant the granting of declaratory relief within the meaning of said Rule 66.

Wherefore, the order appealed from is affirmed, without pronouncement as to costs.

*Moran, Paras, Feria, Pablo; Bengzon; Padilla, Tuason; Montemayor, Reyes, and Jugo. — J.J. concur.*

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